IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1277 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

DISTRICT AYURVEDIC OFFICER

Versus

RANJITSINH M JHALA

Appearance:

M/S.VYAS ASSOCIATES for Petitioner

Mr DA Surani for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 18/04/2000

ORAL JUDGEMENT

Learned advocate Mr.D.D.Vyas has appeared for the petitioner and learned advocate Mr.D.A.Surani has appeared for the respondent workman.

In the present petition, the award passed by the labour court, Surendranagar in Reference (LCS) No. 1055 of 1989 dated 20th August, 1998 has been challenged by the petitioner whereby the petitioner has been directed to reinstate the respondent workman in service with continuity of service and with full back wages for the intervening period. At annexure B,page 20 of the petition, the petitioner has produced death certificate of the respondent workman wherein it is mentioned that the respondent Jhala Ranjitsinh M. has died on22nd December, 1996, during the pendency of the reference before the labour court and also before publication of the award passed by the labour court.

Before the labour court, the respondent workman has challenged theorderof termiation dated 4th April, 1988. According to the respondent workman, he was working as peon against the vacancy of permanent peon on ad hoc basis from 1st October,1984 and he continued to remain in service upto 3rd April, 1988 and meanwhile, the respondent workman has completed 240 days' continuous service within 12 months preceding the dateof termination of his services and that at the time of terminating his services, the provisions of section 25F were not complied with by the petitioner and,therefore, it was the submission of the respondent that the impugned order of termination is bad. It was also the submission of the respondent workman before the labour court that he was working as a peon against the post of one Mr. Mirani who was full time employee and the respondent has prayed before the labour court that therespondent is entitled to hold the post as a permanent employee of the petitioner.

The labour court has considered the documentExh. 17 which is a letter dated 19th November, 1984 and Exh. 22 as per which the respondent was appointed against the vacancy of permanent employee and he had worked from1984 to 1988 against thevacancy of permanent peon and, therefore,the respondent is entitled to the benefit of permanency as a fulltime employee of the petitioner. The labour court has considered the evidenceon record and has recorded finding of fact that therespondent had completed 240 days' continuous service within 12 months preceding the date of termination and that the petitioner has also not complied with theprovisions of section 25F of the ID Act at the time of terminating the services of the respondent workman and,therefore,the leabour court has declared the impugned order of termination as illelgal and has set aside thesame and consequently, the labour court has directed the petitioner to reinstate the

respondent workman in service withcontinuity of service and with full back wages for the intervening period. The servicesof the respondent workman was terminatedon 4th April, 198 and the workman has diedon 22nd April, 1986 as per the death certificate at page 20 of the petition. The labour court has further observed that considering Exh. 11, from1985, the respondent has given an application for making him permanent employee-full time peon which was recommended by the Medical Officer, Vadhwan with an opinion that if the respondent is made permanent and full time employee, then, there is no difficulty but this recommendation of the Medical Officer, Vadhwan has remained without any consideration and, therefore, thelabour court hasobserved in pargraph 8 that thus the respondent is entitled to the post of permanent peon on permanent basis.However,in the operating portion, no such direction has been given by the labour court. In the operating portionof the impugned award, the only direction is thatof reinstatementof the respondent workman with continuity of service with full back wages for the intervening period.

Learned advocate Mr.Vyas apearing for the petitioner has submitted that the labour court has no jurisdiction to consider the caseof the respondent beyond the terms of thereference and the terms of reference is to challenge thetermination order with a prayer for reinstatement with continuity of service and with full back wages. So, at the time of termination of service, the respondent was working as a part time peonfor two hours in a day and, therefore,hehas submitted that the labour court cannot have any power or jurisdiction to pass any order or cannot make any observation which would go beyond the termsof thereference. As against that, learned advocate Mr.Surani has relied upon the decisison of this court reported in 1998 (1) LLJ 1127 in caseof Vaternary Officer and Anr. versus Rajendra R.Jhala. Relying upon the said decision, he has submitted that in this case, the order of termination has been held to be invalid and thetribunal has directed that the employee should beregularized and payment of regular scale is justified on equity, fair play and justice. Inthe said case, the orderof termination has been chalenged by the workman concerned before the labour court and the labour court has decided that before terminating the services of the workman concerned,the procedure prescribed undersection 25F of the ID Act has not been followed and, therefore, reinstatement has been granted but after reinstatement, again the workman concerned has been terminated and thereafter, petition has been filed challenging subsequent termination by amending the writ

petition. At that time, the court has considered the factsof that case and has come to the conclusion that after appointment of the concerned workman, no regular selection was held orregular appointment ws made to which the workmancantake part andno such chance was given and in the case before hand, such are not the facts. In the case before hand, the respondent workman concerned has died on 22nd December, 1996 and, therefore, question of regularizing his service and giving him permancney benefit is out of question. However, according to my opinion, the labour court has no jurisdiction to decide any question which is beyond the terms of reference and, the observations made by the labour court to the effect that the respondent is entitled to the permanent post of peon in the petitioner is beyond the terms of reference because this was not the case or dispute which was raised before the labour court and such dispute was not referred toby the appropriate Government to the labour court for adjudication. However, such observations can, certainly, not have any bearing on the issue of reinstatement of therespondent workman since the same is not possible because the respondent has died on 22nd December, 1996 and therefore, directions qua reinstatement of the respondent workman are not required to be implemented However, as per the impugned award, the petitioner is required to be directed to treat the respondent to have continued in service continuously as if his services were never terminated and on that basis, the petitioner is required to calculate the back wages from the date of termination of services of the respondent till the date of his death while taking into consideration the revision in pay which has taken place from time to time and thus, thepetitioner is required to be directed to pay back wages from the date of his termination till the date of his death to his heirs and legal representatives. The back wages for the aforesaid period are required to be paid to the heirs and lelgal representatives of the deceased workman and to that extent, the impugned award is required to be modified.

Therefore, this petition is partly allowed. In view of the death of the respondent workman on 22nd December, 1996, it is clarified that the directions of the labour court to reinstate the respondent workman are not requiried to be implemented. However, the petitioner is directed to pay to the heirs and legal representatives of the respondent workman the back wages for the intervening period from 4th April, 1988 to 22nd December, 1996 within one month from the date of receiving certified copy of this order by taking into consideration

the revision of pay which has taken place from time to time from the date of termination of the respondent workman till the date on which the respondent workman has died as if the services of the respondent workman has not been terminatned and he has remained in service continuously till the dateof his death. Rule is accordingly made absolute to the aforesaid extent with no order as to costs.

18.4.2000. (H.K.Rathod,J.)

Vyas